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9  
10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 DENISE ELIZABETH, ) Case No. CV12-7719 CAS (VBKx)  
14 Plaintiff, )  
15 vs. ) UNITED STATES OF AMERICA'S  
16 TIMOTHY FRANZ GEITHNER, et ) MEMORANDUM IN SUPPORT OF  
al., ) ITS MOTION TO DISMISS UNDER  
17 Defendants. ) RULES 8 AND 12 OF THE FED. R.  
18 ) CIV. P.  
19 )  
20 ) Hearing:  
21 ) January 14, 2013, at 10 a.m.  
22 ) Courtroom 5 (Room 218-J; 2<sup>nd</sup> Floor)  
23 ) Federal Courthouse  
24 ) 312 North Spring Street,  
25 ) Los Angeles, California  
26 )  
27 ) Judge Christina A. Snyder  
28 )

22 The United States of America (erroneously named in this action through its  
23 agent, Timothy Franz Geithner), by and through its undersigned counsel, hereby  
24 submits this memorandum in support of its motion (1) to dismiss plaintiff's  
25 complain for lack of subject matter jurisdiction (Fed. R. Civ. P. 12(b)(1)); (2) to  
26 dismiss for failure to state a claim upon which relief can be granted (Fed. R. Civ.  
27 P. 12(b)(6); (3) to dismiss for failure to properly serve the United States (Fed. R.  
28

1 Civ. P. 12(b)(5)); and for failure to provide the Court with a short and plain  
 2 statement of both the grounds for the Court's jurisdiction and the claim showing  
 3 that the pleader is entitled to relief (Fed. R. Civ. P. 8(a)).

4 Plaintiff's Libel of Review is largely indecipherable and offers little  
 5 guidance as to the circumstances giving rise to this suit. As explained more fully  
 6 below, defects in both the substance and service of the complaint render the  
 7 pleading defective on its face, and therefore subject to dismissal by the Court.

#### 8 **I. Lam's Filings with the Court**

9 On September 10, 2012, Denise Elizabeth Lam ("Lam") filed a document  
 10 captioned "Denise Elizabeth v. Timothy Franz Geithner and Selvi Stanislaus" and  
 11 entitled:

12 Libel of Review

- 13 - common law counterclaim in admiralty
- 14 - notice of lis pendens and –
- 15 - verified statement of right-

16 Re: God-given unalienable rights in the  
 original estate – Article III; Constitution

17 The ensuing pleading is a largely nonsensical series of accusations levied  
 18 against federal and state tax authorities. Lam accuses Timothy Franz Geithner, the  
 19 current Secretary of the Treasury, and Selvi Stanislaus, the current Executive  
 20 Officer of the California Franchise Tax Board, of "denying [Lam's] right to  
 21 demand lawful money and interfering with [Lam's] redemption from the elastic  
 22 currency system of the Federal Reserve."<sup>1</sup> With respect to Mr. Geithner in  
 23 particular, Lam alleges that he has sent her letters threatening "a \$5K frivolous tax  
 24 penalty."<sup>2</sup> Lam appears to dispute her liability for this penalty, and indeed income  
 25 taxes in general, claiming that "[t]his presumption of liability...is erroneous and  
 26 based upon endorsements of private credit from the Federal Reserve that have

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27 <sup>1</sup> Libel of Review at 3

28 <sup>2</sup> Id.

1 never been made in good faith.”<sup>3</sup> Appended to the Complaint is a letter issued to  
 2 Lam on August 8, 2012 by the Internal Revenue Service (“IRS”) informing her  
 3 that the document she has filed as her return for the 2011 taxable year constitutes a  
 4 frivolous filing, potentially subjecting her to a \$5,000.00 penalty under I.R.C. §  
 5 6702.

6 On September 20, 2012, Lam filed a document with the Court entitled  
 7 “Notice of Claim and Abatement.”<sup>4</sup> This document is comprised of a IRS Form  
 8 843, Claim for Refund and Request for Abatement, prepared by Lam and dated  
 9 September 20, 2012. In this claim Lam requests the refund of federal and state  
 10 income tax withholdings in the amounts of \$6,674.22 and \$1,838.36 respectively  
 11 for the 2011 taxable year. Lam further requests that a “pending frivolous claim” in  
 12 the amount of \$5,000.00 be abated.

13 On October 24, 2012, Lam filed an additional document with the Court  
 14 entitled “Notice of Refusal for Cause of Penalty Charge and Intent to Offset  
 15 Federal Payments.”<sup>5</sup> Included with this document is a letter issued to the plaintiff  
 16 by the Internal Revenue Service dated October 29, 2012 (this appears to be an  
 17 error) informing Lam that she has been assessed a frivolous filing penalty for the  
 18 2011 taxable year.

19 Lams’ Libel of Review offer little discernible information regarding the  
 20 relief sought from the Court. In her own words, Lam claims that “[t]his case is a  
 21 repository for evidence for injunctive relief from any future presentments and theft  
 22 or kidnap actions from any foreign agents or principals.”<sup>6</sup> To the extent that any  
 23 meaning may be parsed from this statement, Lam appears to seek to enjoin the IRS  
 24 and California Franchise Tax Board from any future efforts to assess and collect  
 25 her tax liabilities. Lam’s subsequent filings indicate an additional intention to seek

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26 <sup>3</sup> Id.

27 <sup>4</sup> Docket No. 5

28 <sup>5</sup> Docket No. 7

<sup>6</sup> Libel of Review at 4

1 the refund of federal and state income taxes purportedly withheld for her 2011  
2 taxable year, as well as the abatement of the frivolous filing penalty assessed by  
3 the IRS for the same year. However, Lam has made no effort to amend her  
4 pleadings to bring this issue before the Court, or as set forth below, to establish that  
5 this Court has subject matter jurisdiction.

6 **II. The United States, not Timothy Geithner, is the proper party to the suit.**

7 Lam is apparently suing Geithner because he is the Secretary of the  
8 Treasury. For example, on the first page of her complaint, Lam lists Geithner  
9 together with Henry Paulson and John Snow who are both former Treasury  
10 secretaries.<sup>7</sup> Additionally, the description of Lam's cause of action on the third  
11 page of the complaint and the appended correspondence with the Internal Revenue  
12 Service all indicate that the complaint somehow pertains to taxes. The  
13 Government is unable to discern anything in the complaint suggesting a claim  
14 against Geithner individually.

15 Neither the Treasury Secretary in his official capacity nor the Treasury  
16 Department may be sued in their own name.<sup>8</sup> The United States is the proper party  
17 to suits involving claims against these entities.<sup>9</sup>

18 **III. The Court does not have subject-matter jurisdiction.**

19 Federal courts are courts of limited jurisdiction.<sup>10</sup> They possess only that  
20 power granted by the Constitution and Congress.<sup>11</sup> The Supreme Court said in  
21

22 <sup>7</sup> See the Treasury Department's website at the "About" section:

23 [http://www.treasury.gov/about/history/Pages/edu\\_history\\_secretary\\_index.apx](http://www.treasury.gov/about/history/Pages/edu_history_secretary_index.apx).

24 <sup>8</sup> See *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (naming individual  
IRS officers does not keep action from being suit against the United States);

25 *Devries v. Internal Revenue Service*, 359 F.Supp. 2d 988, 991-92 (E.D. Cal. 2005).

26 <sup>9</sup> *Gilbert*, 756 F.2d at 1458; *Devries*, 359 F.Supp. 2d at 991-92.

27 <sup>10</sup> *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374, 98 S.Ct. 2396,  
57 L.Ed.2d 274 (1978).

28 <sup>11</sup> *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128  
L.Ed.2d 391 (1994).

1 *Kokkonen v. Guardian Life Insurance Co. of America* that “it is to be presumed  
2 that a cause lies outside this limited jurisdiction [of federal courts], and the burden  
3 of establishing the contrary rests upon the party asserting jurisdiction.”<sup>12</sup>

4 **A. Lam makes no showing that the Government has waived its sovereign**  
5 **immunity.**

6 Because the United States is protected from suit by sovereign immunity, in  
7 any action against the United States—in addition to a general grant of subject matter  
8 jurisdiction—the United States must waive its sovereign immunity as explained by  
9 the Ninth Circuit in *Powelson v. United States*.<sup>13</sup> Only congress may waive  
10 sovereign immunity and establish the terms under which the United States may be  
11 sued.<sup>14</sup> As stated by the Ninth Circuit in *Dunn & Black, P.S., v. United States*,  
12 waivers of sovereign immunity are strictly construed.<sup>15</sup> According to *Powelson*,  
13 the absence of a waiver of sovereign immunity is not merely a defense, but a  
14 “jurisdictional bar” to the action.<sup>16</sup> And the Ninth Circuit has clarified that this  
15 jurisdictional bar cannot be avoided merely by naming officers of the United States  
16 as defendants.<sup>17</sup>

17 The party seeking to establish a waiver of sovereign immunity has the  
18 burden to show that sovereign immunity has been unequivocally waived.<sup>18</sup> While  
19 complaints written by *pro se* plaintiffs may be more liberally construed than those  
20

21 <sup>12</sup> *Id.* (citations omitted).

22 <sup>13</sup> 150 F.3d 1103, 1104-05 (9th Cir. 1998). *See also United States v. Dalm*, 494  
23 U.S. 596, 608, 110 S.Ct. 1361, 108 L. Ed. 2d 548 (1990).

24 <sup>14</sup> *Army & Air Force Exchange Serv. V. Sheehan*, 456 U.S. 728, 734, 102 S. Ct.  
25 2118, 72 L.Ed. 2d 520 (1982); *Dunn & Black, P.S., v. United States*, 492 F.3d  
26 1084, 1090 (9th Cir. 2007).

27 <sup>15</sup> 492 F.3d at 1088.

28 <sup>16</sup> *Powelson*, 150 F.3d at 1104 (quoting 16 James Wm. Moore et al., *Moore’s*  
Federal Practice, ¶ 105.21 (3d ed. 1998)).

<sup>17</sup> *Hutchinson v. United States*, 677 F.2d 1322, 1327 (9th Cir. 1982).

<sup>18</sup> *See Dunn & Black*, 492 F.3d at 1088.

1 written by lawyers,<sup>19</sup> a plaintiff's pro se status does not expand the jurisdictional  
2 reach of the Court.<sup>20</sup> Plaintiff must still establish facts showing that the Court has  
3 jurisdiction to adjudicate her complaint.

4 Lam's libel of review is peppered with citations to statutes covering topics  
5 ranging from the registration of foreign propagandists (22 U.S.C. § 611) to  
6 maritime embezzlement and theft (18 U.S.C. §661).<sup>21</sup> Noticeably absent from  
7 Lam's litany of authority is a statute providing for the waiver of sovereign  
8 immunity necessary to bring an action against the United States. While on page 5  
9 of her complaint Lam asserts that "[t]here is no governmental immunity to cover  
10 'law enforcement officers' who choose to interfere with our rights to the land" and  
11 says that "violators will be arrested by the U.S. Marshall[.]" she cites no act of  
12 Congress in support of these assertions. Ultimately, Lam does not so much as  
13 mention the term *sovereign immunity*. Thus, Lam has failed to establish that  
14 Congress has waived sovereign immunity and, as a consequence, she has failed to  
15 establish that the Court has subject-matter jurisdiction over the instant action.

16 In *Ruiz v. United States*, the District Court dismissed a similar action against  
17 Timothy Geithner in which the plaintiff also captioned his document "Libel of  
18 Review – common law counterclaim in admiralty – [etc., etc.]" because, among  
19 other reasons, the plaintiff had failed to show a waiver of sovereign immunity.<sup>22</sup> In  
20 *Keith v. Everson*, involving a similar "counterclaim – in admiralty [etc., etc.]," the  
21  
22

23 <sup>19</sup> *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987).

24 <sup>20</sup> *See, e.g., Pryor v. United States*, 85 Fed. Cl. 97, 102-03 (Fed. Cl. 2008) ("the  
25 leniency afforded pro se litigants with respect to mere formalities does not relieve  
26 them of the burden to meet jurisdictional requirements").

27 <sup>21</sup> Libel of Review at 2.

28 <sup>22</sup> 104 A.F.T.R. 2d 2009-6832, 2009 WL 3232160, \*1-3 (S.D. Cal. 2009). *See Also*  
*Keith v. Everson*, 94 A.F.T.R. 2d 2004-6530, 2004 WL 2601073 (D. Nev. 2004);  
*Holman v. Paulson*, 2009 WL 1465461 (E.D.N.C. 2009).



1 court noted that similar “nonsensical” complaints have been filed by several  
2 plaintiffs and been dismissed.”<sup>23</sup>

3 **B. Documents subsequently filed with the Court are insufficient to**  
4 **establish a waiver of sovereign immunity**

5 In addition to her Libel of Review, plaintiff has also filed a document with  
6 the Court entitled Notice of Claim and Abatement. Appended to this document is  
7 an administrative refund claim prepared by Lam and dated September 20, 2012.  
8 While this “notice” is not a part of the complaint, the contents of said filing  
9 indicate that Lam may view the instant action as a suit for the refund of taxes she  
10 believes to have been erroneously collected by the IRS. If such is the case, the  
11 allegations contained in Lam’s Libel of Review fall well short of what is necessary  
12 to establish the Court’s jurisdiction.

13 Under 28 U.S.C. §1346(a)(1) the district courts possess original jurisdiction  
14 over claims against the United States for the recovery of taxes alleged to have been  
15 erroneously assessed or collected. However, this waiver of sovereign immunity is  
16 limited by 26 U.S.C. § 7422, which provides that such proceedings may not be  
17 maintained in any court “until a claim for refund or credit has been *duly filed* with  
18 the Secretary or his delegate, according to the provisions of law in that regard, and  
19 the regulations of the Secretary or his delegate established in pursuance therefore.”  
20 (Italics added.)

21 A duly filed administrative refund claim must contain a written declaration,  
22 made under penalty of perjury, detailing the grounds upon which a credit or refund  
23 is claimed and facts “sufficient to apprise the Commissioner of the exact basis  
24  
25

26 <sup>23</sup> 2004 WL 2601073 (*citing Monroe v. Schneider*, 2004 WL 2110697 (D. OR.  
27 2004); *Leroy v. Matthews*, 2004 WL 848189 (D. OR. 2004); *Gookhee v. Caisse*,  
28 2004 WL 1196666 (D. OR. 2004); *Evans v. Firth*, 2004 WL 1379458 (D. Or.  
2004); *Ray v. Lowder*, 2003 WL 695924 (M.D. Fla. 2003)).

1 thereof.”<sup>24</sup> Such claim must also be timely filed in accordance with I.R.C. §  
2 6511(a) which provides, in relevant part:

3 [A] claim for credit of refund of an overpayment of any tax imposed  
4 by this title in respect of which tax the taxpayer is required to file a  
5 return shall be filed by the taxpayer within 3 years from the time the  
6 return was filed or 2 years from the time the tax was paid, whichever  
7 of such periods expires the later, or if no return was filed by the  
8 taxpayer, within 2 years from the time the tax was paid.

9 Lam’s Libel of Review contains none of the allegations necessary to  
10 establish the jurisdictional prerequisites for a refund suit against the United States.  
11 Lam provides no information regarding the date her claim was filed, the nature and  
12 amount of such claim, or the grounds upon which said claim was based. Indeed,  
13 she fails even to mention whether she has filed a refund claim with the IRS in the  
14 first instance, or whether she now seeks the refund of any amounts alleged to have  
15 been collected by the IRS. The fact that some of this information may be extracted  
16 or inferred from miscellaneous documents subsequently filed with the Court is  
17 irrelevant in assessing the sufficiency of the pleadings. Accordingly, to the extent  
18 the allegations in the Libel of Review may be reasonably viewed as a claim for  
19 refund, Lam has failed to meet her burden of showing an unequivocal waiver of  
20 immunity by the Government.

21 **C. The Court lacks jurisdiction to issue injunctions to restrain the**  
22 **assessment or collection of taxes against Lam.**

23 Section 7421 of the Internal Revenue Code is known as the Anti-Injunction  
24 Act. It provides that, subject to specified exceptions, “no suit for the purpose  
25 restraining collection of any tax shall be maintained in any court by any person,  
26 whether or not such person is the person against whom such tax was assessed.”  
27 According to the Supreme Court in *Bob Jones University v. Simon*, the principal

28 <sup>24</sup> 26 C.F.R. §301.6402-2(b)(1); *Quarty v. United States*, 170 F.3d 961, 972 (9th Cir. 1999).



1 purpose of the Act is to protect “the Government’s need to assess and collect taxes  
2 as expeditiously as possible with a minimum of preenforcement judicial  
3 interference” and to require that disputes over tax amounts be determined in refund  
4 suits.<sup>25</sup>

5 According to the Ninth Circuit in *In re J.J. Re-Bar Corp.*, it is the Ninth  
6 Circuit’s “general rule that the Anti-Injunction Act ‘precludes federal jurisdiction’  
7 over actions seeking to enjoin the IRS’s tax collection efforts.”<sup>26</sup> In *Maxfield v.*  
8 *United States Postal Service*, the Ninth Circuit said that the Anti-Injunction Act is  
9 “strictly enforced.”<sup>27</sup> If the taxpayer does not show that her suit is within a  
10 statutory or judicial exception, “the district court lacks subject matter jurisdiction  
11 and must dismiss the complaint” according to the Ninth Circuit in *Jensen v.*  
12 *Internal Revenue Service*.<sup>28</sup> The judicially-created exception to the Anti-Injunction  
13 Act was specified by the Supreme Court in *Enochs v. Williams Packing &*  
14 *Navigation Co.*,<sup>29</sup> and requires that the taxpayer show that (1) under no  
15 circumstance can the Government ultimately prevail on the merits and (2) the  
16 taxpayer will suffer irreparable injury without injunctive relief.<sup>30</sup> Unless both  
17 conditions are met, the Supreme Court in *Alexander v. “Americans United” Inc.*  
18 directed that “a suit for preventative injunctive relief must be dismissed.”<sup>31</sup>

19 Here, Lam apparently requests injunctive relief as reflected in her statement  
20 that “[t]his case is a repository for evidence injunctive relief from any future  
21 presentments and theft or kidnap actions from any foreign agents or principals.”  
22 Yet she has failed to address the Anti-Injunction Act in her “Libel of Review” or

23 <sup>25</sup> 416 U.S. 725, 736, 94 S.Ct. 2038, 40 L.Ed. 2d 496 (1974).

24 <sup>26</sup> 644 F.3d 952, 955 (9th Cir. 2011) (*Quoting Hansen v. Dep’t of Treasury*, 528  
25 F.3d 597, 601 (9th Cir. 2007)).

26 <sup>27</sup> 752 F.2d 433, 434 (9th Cir. 1984).

27 <sup>28</sup> 835 F.2d 196, 198 (9th Cir. 1987).

28 <sup>29</sup> 370 U.S. 1, 82 S.Ct. 1125, 8 L.Ed.2d 292 (1962).

<sup>30</sup> *Bob Jones University*, 416 U.S. at 737.

<sup>31</sup> 416 U.S. 752, 758, 94 S.Ct. 2053, 40 L.Ed.2d 518 (1974).

1 make any effort to show how she comes within the statutory exceptions or the  
2 strict requirements of *Enochs v. Williams Packing*. And so, to the extent she  
3 requests the Court to enter injunctive relief, Lam's suit must be dismissed as  
4 required by the Supreme Court's decision in *Alexander*.

5 **IV. Lam has not properly served the United States**

6 To serve the United States, a plaintiff must (1) serve the United States  
7 Attorney for the district where the action is brought, (2) serve the Attorney General  
8 by registered or certified mail, and (3) if the action challenges an order of a non-  
9 party agency or officer of the United States, serve the agency or officer by  
10 registered or certified mail.<sup>32</sup> Lam has only served the Internal Revenue Service  
11 with a copy of the complaint via mail. This is not sufficient service against the  
12 United States.

13 **V. Lam has failed to state a claim on which relief can be granted.**

14 According to the Supreme Court in *Bell Atlantic Corp. v. Twombly*, in the  
15 complaint, a plaintiff must state "enough facts to state a claim to relief that is  
16 plausible on its face."<sup>33</sup> In *Ashcroft v. Iqbal*, the Supreme Court clarified that a  
17 claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to  
18 draw the reasonable inference that the defendant is liable for the misconduct  
19 alleged."<sup>34</sup> While the Court must accept all well-pleaded factual allegations as  
20 true, "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
21 conclusory statements, do not suffice."<sup>35</sup> The Court is similarly not obligated "to  
22 accept as true a legal conclusion couched as a factual allegation."<sup>36</sup> Accordingly,  
23  
24

25 <sup>32</sup> Fed. R. Civ. P. 4(i)(1).

26 <sup>33</sup> 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).

27 <sup>34</sup> 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

28 <sup>35</sup> *Id.*

<sup>36</sup> *Id.* (quoting *Twombly*, 550 U.S. at 555).

1 the inquiry faced by the Court is whether, assuming the veracity of all well-pleaded  
2 allegations, the complaint states a plausible claim for relief.<sup>37</sup>

3 Lam's Libel of Review is comprised principally of vague legal sounding  
4 phrases devoid of any applicability to the Plaintiff's interactions with the United  
5 States. Perhaps the only factual allegation relevant to the conduct of the United  
6 States put forward by the plaintiff is that "[r]ecently GEITHNER has sent a letter  
7 threatening a \$5K frivolous filing penalty."<sup>38</sup> Plaintiff expounds on this statement  
8 by claiming that she has reviewed the citations contained in "GEITHNER's letter"  
9 and "[does] not understand how the IRS agent could conclude that redeeming  
10 lawful money is a *frivolous* method of filing a tax return."<sup>39</sup> Accordingly, the  
11 relevant factual allegations contained in the plaintiff's Libel of Review may be  
12 summarized as follows: 1) plaintiff has received a letter indicating that she may be  
13 liable for a frivolous filing penalty; and 2) she has reviewed the letter and does not  
14 agree with its conclusions.

15 Plaintiff's threadbare factual allegations are insufficient to establish a  
16 facially plausible cause of action. Her Libel of Review should therefore be  
17 dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure. In *Travis*  
18 *v. Gable*, the District Court dismissed under Rule 12(b)(6) and 12(b)(1) a similar  
19 "Libel of review – common law counterclaim in admiralty – [etc., etc.]" finding  
20 the allegations "wholly unsubstantial, frivolous, and without merit."<sup>40</sup>

21 **VI. Plaintiff has failed to comply with Rule 8 of the Federal Rules.**

22 Plaintiff has failed to comply with Rule 8's requirements regarding a short  
23 and plain statement of (1) the grounds for the Court's jurisdiction and (2) the claim  
24 showing that the pleader is entitled to relief. Rule 8 contemplates that the pleader  
25 will provide not only fair notice of the nature of the claim but also the grounds on

26 <sup>37</sup> *Iqbal*, 556 U.S. at 679.

27 <sup>38</sup> Libel of Review at 3.

28 <sup>39</sup> *Id.*

<sup>40</sup> 2007 WL 2492315, \*3 (D. Or. 2007).

1 which it rests.<sup>41</sup> Thus, Rule 8 “contemplate[s] the statement of circumstances,  
2 occurrences, and events in support of the claim presented[.]”<sup>42</sup>

3 Here Lam has failed to provide notice to the Government or the Court of  
4 what exactly her claim is or the grounds on which that claim rests. At most, the  
5 Government can discern that Lam somehow believes she is exempt from federal  
6 and state income taxes, and thus seeks an injunction preventing any future efforts  
7 by state and federal authorities to assess and collect said liabilities. However, Lam  
8 cites no relevant statutory authority demonstrating a waiver of sovereign immunity  
9 necessary to maintain such an action against the United States. Moreover, in  
10 describing the underlying grounds for her dispute, Lam has offered the Court little  
11 more than legalistic gibberish. The incoherency of Lam’s Libel of Review thus  
12 prohibits the Government from deciphering and adequately responding to Lam’s  
13 allegations, whatever they may be.

14 \\\

27  
28 <sup>41</sup> See *Twombly*, 550 U.S. at 555 n. 3 (citing Wright & Miller § 1202, at 94,95)

<sup>42</sup> *Twombly*, 555 U.S. at 555 n. 3 (quoting Wright & Miller § 1202, at 94, 95).

**VII Conclusion**

The Court should dismiss the complaint because the Court lacks subject-matter jurisdiction, Plaintiff has not properly served the United States, the complaint fails to state a claim on which relief can be granted, and it violates Rule 8 of the Federal Rules of Civil Procedure.

Respectfully Submitted,

ANDRÉ BIROTTE JR.  
United States Attorney  
SANDRA R. BROWN  
Assistant United States Attorney  
Chief, Tax Division

DATED: 11/29/2012



JAMES C. HUGHES  
Assistant United States Attorney

Attorneys for Defendant  
United States of America

**PROOF OF SERVICE BY MAILING**

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7211, Los Angeles, California 90012.

On **November 29, 2012**, I served

United States of America's Memorandum in Support of Its Motion to Dismiss Under Rules 8 and 12 of the Fed.R.Civ.P.

on the person and entity name below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

SEE ATTACHED.

Date of mailing: **November 29, 2012**.

Place of mailing: Los Angeles, California

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: **November 29, 2012**, Los Angeles, California.

  
MARIA LUISA Q. BULLARD



**RE: DENISE ELIZABETH V. TIMOTHY FRANZ GEITHNER, et al.**

**CASE NO. CV12-7719 CAS (VBKx)**

**SERVICE LIST**

Denise Elizabeth  
622 S. Broadway, Suite 5  
Redondo Beach, CA 90277

Denise Elizabeth Lam  
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